

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No.: 12-cv-462
)	
DAIRYLAND POWER COOPERATIVE,)	
)	
Defendant)	
_____)	

MOTION TO ENTER CONSENT DECREE

Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), respectfully moves the Court to sign and enter the proposed Consent Decree that the United States lodged with the Court on June 28, 2012. The Decree is attached to the United States’ Notice of Lodging of Proposed Consent Decree as Docket Entry No. 2 in this matter. The Court’s entry of the Consent Decree will resolve two related civil actions filed against the Defendant, Dairyland Power Cooperative (“Dairyland”): (1) the instant action filed by the United States for alleged violations of the Prevention of Significant Deterioration (“PSD”) provisions of the Clean Air Act (“the Act” or “CAA”), 42 U.S.C. §§ 7470-92, Title V of the Act, 42 U.S.C. § 7661-7661f, and the federally approved and enforceable Wisconsin CAA State Implementation Plan (“SIP”); and (2) a related CAA citizen-suit action captioned as *Sierra Club v. Dairyland Power Cooperative*, Civ. Action No. 10-cv-303.

As described in the accompanying Memorandum in Support of this motion, the Consent Decree should be entered because it is fair, adequate, reasonable, in the public interest, and

consistent with the goals of the Act. The settlement will reduce sulfur dioxide (“SO₂”), nitrogen oxides (“NO_x”), and particulate matter (“PM”) emissions—pollutants known to be harmful to human health and the environment. The Consent Decree also commits Dairyland to pay a \$950,000 civil penalty and to spend \$5 million to implement environmental mitigation projects. The Consent Decree resulted from extensive arm’s-length negotiations between the United States, the Sierra Club, and Dairyland. The three parties reached this agreement after careful and informed assessment of the merits, costs, risks, and delays that further litigation would entail, as well as the benefits of settlement including the reduction of risk to human health and the environment.

The United States, the Sierra Club, and Dairyland have all signed the Consent Decree. Dairyland consented to entry of the settlement without condition and waived its right to oppose entry or challenge any provision of the Consent Decree. *See* Consent Decree ¶¶ 1, 227. The United States conditioned its final approval of the Consent Decree to allow the public an opportunity to review and provide comment to the United States regarding the settlement embodied in the proposed Consent Decree. *Id.* ¶ 227. Two such comments were received, and are addressed in the accompanying Memorandum in Support.

In addition, because it resolves the Sierra Club’s citizen suit against Dairyland, the Consent Decree is also subject to 42 U.S.C. § 7604(c)(3), which provides that a consent judgment in a civil suit action must provide for review and comment by the Attorney General and the EPA Administrator for forty-five days. Decree ¶ 227. By this Motion, the United States confirms that this review provision has been satisfied.

In light of all of these considerations, and as more fully explained in the accompanying memorandum, the United States respectfully requests that the Court approve and enter the Consent Decree as an Order of this Court, and thereby resolve this case.

Dated: August 14, 2012

Respectfully submitted,

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/s/ Jason A. Dunn

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